

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R. No.1343 of 2018

Date of Decision.27.02.2018

Punjab State Power Corporation Limited

.....Petitioner

Vs

M/s Royal Cement Company

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Babbar Bhan, Advocate for
Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The revision petition is directed at the instance of the petitioner-plaintiff against the order dated 6.12.2017 whereby the application dated 20.11.2017 for placing on record office order No.55 dated 18.06.2012 and letter No.1002 FAU-285 dated 25.01.2010 by way of additional evidence has been dismissed.

Mr. Babbar Bhan for Mr. Naveen S. Bhardwaj, learned counsel appearing for the petitioner submitted that the petitioner-plaintiff instituted the suit for recovery of an amount of ₹4,52,983/- on account of fly ash lifted from 14.09.2009 to 31.05.2010 and ₹15,488/- being the amount of interest thereon @12% per annum. The suit had reached to the final stage when the application aforementioned was moved, as the aforementioned documents were essential and necessary for adjudication of the suit. Though the suit was filed without aforementioned documents but now decision was taken to file the same by way of additional evidence as the objection qua maintainability of suit may not arise at the time of arguments. This fact has totally been ignored by the Court below during the course of argument. It

has also been brought to the notice that a resolution authorizing the Additional Superintending Engineer, Environment and Ash Dyke Cell, GHTP, Lehra Mohabat is also required to be placed on record, though the aforementioned fact has not been incorporated in the application.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bhan, as the documents sought to be placed on record would not be necessary particularly in the suit for recovery. It is only the contract between the parties that has to be placed on record and communications to show whether the amount sought to be recovered was actually due from the defendant or not. Even otherwise, there is no issue of rebuttal and therefore, in case the aforementioned evidence is allowed by way of additional evidence, it would tantamount to granting permission to the plaintiff for rebuttal evidence, which is not correct appreciation of law. Therefore, I do not intend to differ with the finding of the trial Court declining the application.

As regards the submission with regard to filing of the resolution, I am of the view that the substantive right should not be allowed to be defeated on technical ground involving the procedural irregularities so as to ensure that no injustice is done to any party. This view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **United Bank of India Vs. Naresh Kumar and others (1996) 6 SCC 660** whereby while interpreting the provisions of Order 6 Rule 14 and Order 29 Rule 1 CPC, the Hon'ble Apex Court in paragraph 9 and 10 held that such defect can be ratified at any stage of the suit.

In view of the aforementioned observations, the petitioner-

plaintiff shall be entitled to place on record the Resolution. While upholding the order under challenge, the revision petition stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

February 27, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No